

# Notice of Allowability

Application No.

09/548,203

Examiner

Mary J. Steelman

Applicant(s)

OSBORNE ET AL.

Art Unit

2122

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address–**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/26/2004.
2. ☒ The allowed claim(s) is/are 1-12.
3. ☒ The drawings filed on 21 January 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

**DETAILED ACTION**

1. This Office Action is in response to Amendment after Final, submitted 21 July 2004.

Amendment has been entered. Claims 1-12 are amended.

**EXAMINER'S AMENDMENT**

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

3. Authorization for this examiner's amendment was given in a telephone interview with David Rouille, Reg. No. 40,150 on 03/03/2005.

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IN THE CLAIMS:

Claim 1 (Currently Amended)

Claim 1 b) & 1 c) are to be amended as follows:

b) at least one code generator, receiving as an input commands from the coordination software and having as an output client test code directed via a network to a remotely located test engine;

c) ~~at least one~~ said engine, receiving as an input commands from the coordination software, the test engine comprising a computer server having at least one software implementation of a byte code processor executing ~~at least one~~ multiple instances of the client test code in a synchronized fashion;

Claim 7 (Currently Amended)

Claim 7 b) & 7 c) are to be amended as follows:

b) instructions for at least one code generator, receiving as an input commands from the coordination software and having as an output client test code directed via a network to a remotely located test engine;

c) instructions for ~~at least one~~ said test engine, receiving as an input commands from the coordination software, the test engine comprising a computer server having at least one

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software implementation of a byte code processor executing ~~at least one~~ multiple instances of the client test code in a synchronized fashion;

***Allowable Subject Matter***

3. Claims 1-12 are allowed.

***Reasons for Allowance***

4. The following is an examiner's statement of reasons for allowance:

Applicant has pointed out on page 7, first paragraph, of Remarks, received 29 July 2004, the significance of "load testing of an object oriented software component" "in its emulated byte code format", using "a software implementation of a byte code processor." The cited prior art of record fails to teach "output test code directed via a network to a remotely located test engine" and "the test engine comprising a computer server having at least one software implementation of a byte code processor executing multiple instances of the client test code in a synchronized fashion."

All independent claims, claim 1 and claim 7, are patentably distinct over prior art. Thus all dependent claims, claims 2-6 and 8-12 are allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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***Terminal Disclaimer***

5. Terminal Disclaimer as related to co-pending application 09 / 482178 has been received.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Steelman, whose telephone number is (571) 272-3704. The examiner can normally be reached Monday through Thursday, from 7:00 AM to 5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached at (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mary Steelman



03/21/2005

WEI Y. ZHEN  
PRIMARY EXAMINER

